

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSEPH KIMBLE,

Petitioner,

v.

MICHAEL McGINNIS,  
Superintendent of Southport Correctional Facility,

Respondent.

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ORDER  
03-CV-235A

The above-referenced case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1)(B). On June 18, 2009, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that the petition for a writ of habeas corpus filed by petitioner be **denied**.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, the petition for a writ of habeas corpus is denied.

Furthermore, the Court finds that petitioner has not made a "substantial showing of the denial of a constitutional right" pursuant to 28 U.S.C. § 2253(c)(2) ("A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right."); *see also Lucidore v. New York State Div. of Parole*, 209 F.3d 107, 112 (2d Cir. 2000). Therefore, the Court finds that no

certificate of appealability should issue with respect to any of petitioner's claims.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: August 18, 2009